

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JON M. WHITTEN,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 05-130-GMS
)	
GOV. RUTH ANN MINNER, DONNA)	
PRICE, ST. OF DELAWARE,)	
SUSSEX CORR. INST., ST. OF)	
TEXAS, HARRIS COUNTY DISTRICT)	
ATTORNEY'S OFFICE, GALVESTON)	
COUNTY JAIL, RON MULLEN, and)	
WILM. ATTNY GNL'S OFF.)	
)	
Defendants.)	

ORDER

WHEREAS, on March 4, 2005, plaintiff, Jon M. Whitten, SBI #190317 filed this complaint under 42 U.S.C. § 1983, along with an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915;

WHEREAS, at the time he filed the complaint, plaintiff was a prisoner incarcerated at the Sussex Correctional Institution ("SCI") in Georgetown, Delaware (D.I. 2 at 3);

WHEREAS, on March 30, 2005, this Court received plaintiff's notice of change of address indicating that plaintiff has been released from incarceration (D.I. 4);

WHEREAS, the Court has not calculated plaintiff's initial partial filing fee pursuant to 28 U.S.C. § 1915(b)(1);

THEREFORE, at Wilmington this ____ day of _____,

2005, IT IS ORDERED that:

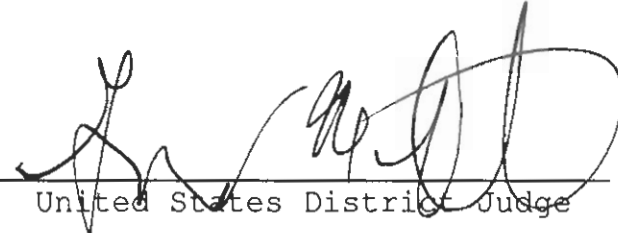
1. The plaintiff's shall file a new motion to proceed in forma pauperis so that the court can determine whether he is eligible to proceed in forma pauperis. See DeBlasio v. Gilmore, 315 F.3d 396, 397 (4th Cir. 2003) ("We hold that the PLRA fee requirements are not applicable to a released prisoner ... and that his obligation to pay filing fees is determined by evaluating whether he qualifies under the general in forma pauperis provision"); McGann v. Commissioner, 96 F.3d 28, 29 (2d Cir. 1996) ("We concluded that the PLRA fee requirements are not applicable to a released prisoner."); Contra, Gay v. Texas Dep't of Corr., 117 F.3d 240, 241 (5th Cir. 1997) ("We hold that a person who files a notice of appeal while in prison is subject to the filing fee requirements of the PLRA despite subsequent release from prison."); In re Peter C. Smith, 114 F.3d 1247, 1251 (D.C. Cir. 1997) ("To require Smith to pay amounts that, according to the PLRA formula, he was capable of paying at the time they were assessed is thus not inconsistent with extending in forma pauperis status to him."); Robbins v. Switzer, 104 F.3d 895, 899 (7th Cir. 1997) ("Under the Act, release does not eliminate an obligation that could and should have been met from the trust account while imprisonment continued.").

2. Plaintiff shall file the motion to proceed in forma pauperis within thirty days from the date this order is mailed,

or the complaint shall be dismissed.

3. The Clerk of the Court shall cause a copy of this order to be mailed to the plaintiff.

April 19, 2005


United States District Judge